

*U.S. v. Southern Coal Corporation*, Civil Action No. 7:16-cv-00462-GEC

# Exhibit 4



**U.S. Department of Justice**

Environment and Natural Resources Division

pmc

90-5-1-1-10974

*Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044*

*Telephone (202) 514-1448  
Cell (202) 532-3365*

September 2, 2020

*Via Electronic and USPS Mail*

Mr. Michael Carey, Esq.  
Mr. Benjamin Bryant, Esq.  
Carey, Scott, Douglas, & Kessler, PLLC  
901 Chase Tower  
707 Virginia Street, East  
P.O. Box 913  
Charleston, WV 25323  
[mwcarey@csdlawfirm.com](mailto:mwcarey@csdlawfirm.com)  
[sbbryant@csdlawfirm.com](mailto:sbbryant@csdlawfirm.com)

Mr. James C. Justice, III  
Southern Coal Corporation  
302 South Jefferson Street  
Roanoke, VA 24011  
[Jcj3@bluestoneindustries.com](mailto:Jcj3@bluestoneindustries.com)

Mr. Thomas Lusk  
Southern Coal Corporation  
302 South Jefferson Street  
Roanoke, VA 24011  
[tomlusk@me.com](mailto:tomlusk@me.com)

Mr. George Stephens  
Southern Coal Corporation  
302 South Jefferson Street  
Roanoke, VA 24011  
[George.Stephens@bluestoneindustries.com](mailto:George.Stephens@bluestoneindustries.com)

Stephen W. Ball  
Southern Coal Corporation  
302 S. Jefferson Street  
Roanoke, VA 24011  
[Steve.ball@bluestoneindustries.com](mailto:Steve.ball@bluestoneindustries.com)

RE: Demand for Stipulated Penalties and Notice of Default in United States of America vs. Southern Coal Corporation, Civil Action No. 7:16-cv-00462-GEC (W.D. Va.)

Dear Messrs. Carey, Bryant, Justice, Lusk, Stephens, and Ball:

This is a demand for stipulated penalties due to Defendants' (Southern Coal Corporation, Premium Coal Company, Inc., National Coal, LLC, and Justice Coal of Alabama, LLC) non-compliance with the December 19, 2016 Consent Decree (Decree). In addition, this is a Notice of Default in accordance with Paragraph 67 of the Decree.

On numerous occasions over the past four years, the U.S. Environmental Protection Agency (EPA), and the State Co-plaintiffs have determined that certain Defendants have failed to maintain adequate compliance with the Decree and the Clean Water Act (CWA). Recently, EPA learned that Defendants Southern Coal Corporation, Premium Coal Company, Inc., and National Coal, LLC, have failed to submit timely permit applications and/or maintain required permit coverage pursuant to the CWA National Pollutant Discharge Elimination System (NPDES) for 11 sites in Tennessee. As a result, the Tennessee Department of Environmental Conservation (TDEC) has discovered unpermitted discharges from three of those sites. A list of Tennessee sites with expired NPDES permits and unpermitted discharges is set forth in Attachment A. The failure to file timely applications for renewal, the failure to maintain NPDES permit coverage, and the resulting unpermitted discharges are violations of the Decree, Paragraphs 22 and 29, as well as the CWA.

In addition, certain Defendants have failed to timely submit applications for three NPDES permits in the State of Alabama, resulting in the failure to maintain required permit coverage pursuant to the CWA NPDES for one site in Alabama which has not, to date, received new permit coverage. As a result, the Alabama Department of Environmental Management has discovered unpermitted discharges from the site. A list of late application submittals, the expired permit coverage, and unpermitted discharges documented at an Alabama site is set forth in Attachment B. The failure to submit timely and complete applications to maintain NPDES permit coverage, the failure to maintain NPDES permit coverage, and the resulting unpermitted discharges are violations of the Decree, Paragraphs 22, and 29, as well as the CWA.

Defendants' noncompliance includes the failure to comply with the CWA as required by Paragraph 22, which provides that "Defendants shall perform the work required by this Consent Decree in compliance with the requirements of all applicable federal, state, and local laws, regulations, and permits." In addition, Defendants have failed to comply with Paragraph 29, which provides that "[w]here any compliance obligation under this Decree requires Defendants to obtain a federal, state, or local permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals." Furthermore, Defendants are required, under Paragraphs 22, 29, and 63 to take "all necessary additional actions to comply with the Defendants' NPDES permits for the term of the Consent Decree."

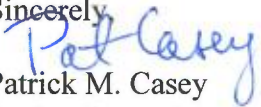
Defendants Southern Coal Corporation, Premium Coal Company, Inc., National Coal, LLC, and Justice Coal of Alabama, LLC are subject to stipulated penalties pursuant to Paragraph 85 of the Decree. The total stipulated penalties due for Defendant's failure to comply with the terms of the Decree is \$3,192,000, as indicated in Attachments A and B. Please note that stipulated penalties continue to accrue until the violations have been addressed. The United States hereby demands

that Defendants pay the accrued stipulated penalties to the United States, Tennessee, and Alabama within 30 days from the date of this letter. Please make such payment in accordance with Paragraphs 94, 98, and 99 of the Decree.

Finally, Defendants in this case, have been seriously and/or repeatedly deficient or late in performance of the Work under the Decree. In accordance with Paragraph 67 of the Decree, the United States demands that Defendants Southern Coal Corporation, Premium Coal Company, Inc., National Coal, LLC take all necessary steps to cease the unpermitted discharges at the sites identified in Attachment A with respect to Tennessee, and comply with the Decree and the CWA within 30 days of the receipt of this letter. The United States demands that Southern Coal Corporation, Premium Coal, and National Coal LLC implement the corrective actions identified in Attachment A-1 within 30 days and notify EPA and TDEC upon completion of this work. Should Defendants Southern Coal Corporation, Premium Coal Company, Inc., and National Coal, LLC fail to cease such unpermitted discharges in Tennessee by taking the specific corrective action measures in Attachment A-1, EPA will present a Sight Draft under the Letter of Credit to Carter Bank and Trust, initiating the Trustee's responsibility to hire and fund contractors to perform the Work in accordance with Paragraph 68 of the Decree.

Thank you for your attention to this important matter. Please contact me if you have any questions.

Sincerely,

  
Patrick M. Casey  
Senior Counsel

Attachments

cc:

*by USPS mail*

Office of Attorney General, AL

Office of General Counsel, Alabama Department of Environmental Management

Rebecca Goodman, Executive Director/General Counsel, Kentucky Energy and Environment Cabinet

Tennessee Attorney General's Office

Office of the Virginia Attorney General

Wesley H. White Esq., Trust Legal Counsel, United Wealth Management Group

Steven W. Ball, Treasurer, Wintergreen Hospitality Partners, LLC

Phyllis Q. Karavatakis, President, Carter Bank & Trust

*by electronic mail*

W. Buntin, TN

[wilson.buntin@ag.tn.gov](mailto:wilson.buntin@ag.tn.gov)

S. Durman, TN

[stephanie.durman@tn.gov](mailto:stephanie.durman@tn.gov)

C. Dear, AL

[clint.dear@adem.alabama.gov](mailto:clint.dear@adem.alabama.gov)

C. Blanton, AL

[carrie.blanton@adem.gov](mailto:carrie.blanton@adem.gov)

C. McNeill	<a href="mailto:cmcneill@adem.alabama.gov">cmcneill@adem.alabama.gov</a>
M. Raack, EPAHQ	<a href="mailto:raak.melissa@epa.gov">raak.melissa@epa.gov</a>
D. Frankenthaler, EPA R3	<a href="mailto:frankenthaler.douglas@epa.gov">frankenthaler.douglas@epa.gov</a>
C. Harsh, EPA R3	<a href="mailto:harsh.chad@epa.gov">harsh.chad@epa.gov</a>
K. Nagrani, EPA R4	<a href="mailto:nagrani.kavita@epa.gov">nagrani.kavita@epa.gov</a>
T. Houda, EPA R4	<a href="mailto:houda.tara@epa.gov">houda.tara@epa.gov</a>
L. Jonas, USDOJ	<a href="mailto:ljonas@enrd.usdoj.gov">ljonas@enrd.usdoj.gov</a>

## Attachment A

Stipulated Penalties							
Company	State	Permit Number	Project Name	Violation	Penalty Date(s)	Penalties Pursuant to CD § 85	Stipulated Penalty
Premium Coal Company, Inc.	Tennessee	TN0063592	Refuse Area #2	Lapse in Permit Coverage as of May 6, 2020	May 6, 2020- July 15, 2020	May 6, 2020 - May 19, 2020: \$1,000 per day (14 days x \$1,000) = \$14,000 May 20, 2020 - June 4, 2020: \$2,500 per day (16 days x \$2,500) = \$40,000 June 5, 2020 - August 25, 2020: \$4,500 per day (81 days x \$4,500) = \$364,500	\$418,500
Premium Coal Company, Inc.	Tennessee	TN0069159	Mine 5A	Lapse in Permit Coverage as of May 6, 2020	May 6, 2020- July 15, 2020	May 6, 2020 - May 19, 2020: \$1,000 per day (14 days x \$1,000) = \$14,000 May 20, 2020 - June 4, 2020: \$2,500 per day (16 days x \$2,500) = \$40,000 June 5, 2020 - August 25, 2020: \$4,500 per day (81 days x \$4,500) = \$364,500	\$418,500
Premium Coal Company, Inc.	Tennessee	TN0079570	Mine 20	Lapse in Permit Coverage as of May 6, 2020	May 6, 2020- July 15, 2020	May 6, 2020 - May 19, 2020: \$1,000 per day (14 days x \$1,000) = \$14,000 May 20, 2020 - June 4, 2020: \$2,500 per day (16 days x \$2,500) = \$40,000 June 5, 2020 - August 25, 2020: \$4,500 per day (81 days x \$4,500) = \$364,500	\$418,500
Premium Coal Company, Inc.	Tennessee	TN0069159	Mine 5A	Unpermitted Discharge on May 19, 2020 at outfall 001	May 19, 2020	May 19, 2020: \$1,000 per day (1 day x \$1,000) = \$1,000	\$1,000
Premium Coal Company, Inc.	Tennessee	TN0079570	Mine 20	Unpermitted Discharge on June 26, 2020 at outfall 005	June 26, 2020	June 26, 2020: \$1,000 per day (1 day x \$1,000) = \$1,000	\$1,000
Premium Coal Company, Inc.	Tennessee	TN0063592	Refuse Area #2	Unpermitted Discharge on July 2, 2020 at outfall 001	July 2, 2020	July 2, 2020: \$1,000 per day (1 day x \$1,000) = \$1,000	\$1,000
						<b>Total TN Stipulated Penalties:</b>	<b>\$1,258,500</b>

Attachment A-1

Required actions to eliminate unpermitted discharges:

Premium Coal Refuse Area 2 (TN0063592)

- Vegetate or stabilize storage areas (see photos 1 and 2).

Premium Coal Mine 5A (TN0069159)

- Reslope and vegetate or otherwise stabilize the highwall area (see photo 3)
- Vegetate the staging area (see photo 3)

Premium Coal Mine 20 (TN0079570)

- Regrade and vegetate or otherwise stabilize the highwall area (see photo 4)
- Vegetate the spoil area (see photo 4)



Attachment A-1

**Image Addendum**



Photo 1: Premium Refuse Area 2. Bare areas on storage area must be vegetated or otherwise stabilized. 7/2/2020.



Photo 2: Premium Refuse Area 2. Pond 2 was discharging at the time of inspection. Discoloration is evidence of sediment load due to unvegetated areas. 7/2/2020.



Attachment A-1



Photo 3: Premium Coal Mine 5A. Highwall and staging area must be regraded and vegetated or otherwise stabilized. 5/19/2020.



Photo 4: Premium Coal Mine 20. Highwall and spoil pile must be regraded and vegetated or otherwise stabilized. 6/26/2020.

